

**From:** darrell  
**To:** Microsoft ATR  
**Date:** 1/28/02 1:54am  
**Subject:** Microsoft Settlement -- Destroying Credibility of Justice System

Gentlemen:

The Microsoft settlement is legitimately destroying any credibility the justice system might have had in administration and regulation of antitrust laws. Yes, I know lawyers love to point out it is a legal system rather than a justice system. However, in the long run effective government must reflect some rough notion of equal protection, government not for sale and some approximation of morality and ethical conduct. The Microsoft case and settlement dramatically illustrates the complete lack of those values being reflected in the "system's enforcement" of legal rules of behavior. By the way, it isn't the "system" simply because you are a person reading this; please wake up and do your job--"Judge".

Over 30 years ago, I took a single MBA course on antitrust law. It was very clear that predatory pricing policies were strictly illegal, under both Sherman and Robinson-Pattman. When Microsoft priced its competitive product at \$0 it was obviously the ultimate predatory pricing policy. It is amazing and embarrassing that it took the government over three years to conclude what was common knowledge on the streets of America as we watched Microsoft drive Netscape out of the business with a \$0 price. Furthermore it was a lame excuse that because it was technology, somehow the antitrust laws did not apply. If you recall people used the same lame excuse to monopolize weaving looms earlier in the last century. As incredibly slow and inept as it was, the court finally concluded what was obvious when viewed cleanly. Without the confounded web of minute bafflegab supported by the economic might of Microsoft to bring any legal argument on antitrust from the last 100 years up for discussion, a reasonable man could have had the case concluded in about a week, at least in my opinion. The result for Microsoft has been to delay a court decision out of the realm of timely relevance.

The current settlement does nothing to insure behavior will change nor punish that behavior in any way that has effective business force sufficient to curb it in the future. The simple fact is that Microsoft is a monopoly. Furthermore, it has used and is using that power to ever extend that monopoly to the net and beyond. They are again doing it thinly veiled, openly in defiance of national law.

As an MBA/MSEE/CEO with over 25 years in the electronics industry, I can testify that the current settlement is a pathetic travesty of justice and law. From my point of view, an appropriate and practical remedy would be to break Microsoft into 6 Companies, all with the same code sources to start out, no interlocking ownership allowed and let each segment markets and compete like everyone else. That solution or one like it would solve the problem because each of those companies could choose to supply source or not to customers, add special features for target markets, and each would be forced to serve their markets aggressively or have it taken away by someone willing to do a better job-- Just like

everyone else! That solution or others that would really work are not hard to come up with; however, Microsoft clearly will not like it; which in turn is a good indication it would be a good solution. Any notion that a team of lawyers and bureaucrats could control Microsoft's behavior through administrative mechanisms independent of their wealth, power and influence is an expensive exercise in futility. As a practical matter, it simply won't work.

Currently reported massive lobbying efforts by Microsoft and their failure to disclose contacts and/or who they have given money to gain influence renders Government authority over the rich laughable! Somewhere along the line the judicial system must recognize that the appearance of impropriety does damage to its very credibility. In the public eye Microsoft has not only bought off the US Government but the government has provided an overly complex legal framework to allow obfuscation of the core elements of antitrust laws. Yes, I know bought off implies direct gangsterism but the effects of massive money are indirect and probably more damaging to our society. Influence on the political system is secured through massive lobbying and "political contributions" which in turn influence the courts. The Tunney Acts recognized the antitrust influence mechanisms. Those acts required at least disclosure. Somehow the Microsoft legal team continues to obfuscate even those explicit laws while they continue to avoid effective remedies against their monopoly.

I strongly urge the current court to reconsider a different break up of Microsoft and secure a solution that is widely expected to work. The high tech software industry does not inherently follow large economies of scale that might justify a larger single company being the supplier of all software on the planet. Instead the most efficient economic production is achieved with smaller companies focused squarely on specific needs. All the downsizing and reorganizing of the last decade, even during strong economic times, attest to the "right sizing" of high tech companies. Even premier electronics companies such as Hewlett Packard have historically kept profit centers and business units below 400 people or so. At least until the original founders retired or passed on that system has worked well for them. More recently, when that company began operating in a monolithic mode, troubles began.

Incidentally, I am a republican.

Sincerely,

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